



# California Regional Water Quality Control Board

## Santa Ana Region



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Arnold Schwarzenegger  
Governor

July 16, 2010

Nardy Khan  
Orange County Public Works  
300 North Flower Street, 7th Floor  
Santa Ana, CA 92703-5000

Subject: **CLEAN WATER ACT SECTION 401 WATER QUALITY STANDARDS  
CERTIFICATION FOR SAN DIEGO CREEK CHANNEL (REACH II)  
OPERATIONS & MAINTENANCE PROJECT, CITY OF IRVINE, ORANGE  
COUNTY (ACOE REFERENCE NO. NOT AVAILABLE) (SARWQCB  
REFERENCE NO. 302009-50)**

Dear Ms. Khan:

On September 24, 2009, we received an application for a Clean Water Act Section 401 Water Quality Standards Certification (401 Certification) for the above referenced project. Included with the application were the following:

- Documentation showing that applications for a U.S. Army Corps of Engineers (ACOE) Section 404 permit and a California Department of Fish and Game (CDFG) Lake or Streambed Alteration Agreement for the project have been submitted;
- \$40,000 as the fee required by CCR 23 § 2200(a)(2) to review a 401 Certification application for impacts to 20.4 acres of jurisdictional area.

In late 2003 and early 2004, the ACOE approved emergency dredging and vegetation removal activities to reestablish flood capacity in this area of the channel. However, the bird nesting season prevented the removal of all sediment that had been planned. In December 2006, the ACOE, U.S. Fish and Wildlife Service, RWQCB, and California Department of Fish and Game approved completion of the remaining maintenance activities within Reach II. OCPW completed these activities in March 2007, including sediment and vegetation removal (retaining the existing 40-foot vegetated buffer zone along the eastern bank). Native trees with a diameter at breast height (dbh) of greater than 3 inches and exotic vegetation were removed from the 40-foot vegetated buffer zone. Exotic vegetation removal was conducted in accordance with the OCPW Exotic Plant Eradication and Control Plan, prepared by the Chambers Group, updated December 2007.

*California Environmental Protection Agency*



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Mitigation for the 2003/2004 and 2006/2007 maintenance projects is currently being implemented by the creation of 17.77 acres of willow riparian habitat at the Talbert Nature Reserve in Huntington Beach and the creation and/or restoration of 1.39 acres of willow riparian and 4.25 acres of mulefat and Mexican elderberry habitat at Mason Regional Park in Irvine. In addition, 13.5 acres of giant reed (*Arundo donax*) are being abated in the Gypsum Canyon segment of the Santa Ana River.

This letter responds to your request for certification, pursuant to Clean Water Act Section 401, that the proposed project, described below, will comply with State water quality standards outlined in the Water Quality Control Plan for the Santa Ana River Basin 1995 (Basin Plan) and subsequent amendments:

Project description:	The proposed project involves implementation of standard maintenance procedures set forth in the existing (RBF Consulting 2008) Operations and Maintenance (O&M) manual, for an additional five year period. The project is intended to reestablish and maintain the original flood-carrying capacity of Reach II (Campus Drive to Interstate 405 Freeway) of the San Diego Creek Channel, through facility inspections, routine maintenance activities, vegetation management, and emergency repair work. Additionally, the project would include sediment removal from Basins 2 and 3 to meet the requirements of the San Diego Creek Channel TMDL for Sediment adopted by the RWQCB in 1999. The proposed project would result in the removal of a total of 3.9-acres of riparian vegetation that was mapped and described as suitable LBV habitat in the 2008 LBV focused survey report prepared by Jones & Stokes. This vegetation is scattered in small areas along the west bank.
Receiving water: Location:	San Diego Creek and upper Newport Bay Latitude/Longitude, +33° 40' 00" N, -117° 50'00" W Tustin USGS Quadrangle, Township T6S, Range R9W, Sections 58, 59, 60
Area of Disturbance:	A total of 20.4 acres, with 1.09-acres wetlands, 0.34-acre riparian vegetation, and 18.97-acres open water habitat
Dredge volume:	Up to (but not exceeding) 181,045 cubic yards of sediment will be removed from Basins 2 and 3 when capacity within either reaches 50% in compliance with the conditions of the TMDL.



Federal permit:                      Nationwide Permit 31

You have proposed to mitigate water quality impacts as described in your Certification application. The proposed mitigation is summarized below:

- For impacts to riparian habitat occupied by the federal- and state- listed least Bell's vireo, 7.8 acres of riparian restoration will be conducted within Peters Canyon Regional Park through removal of invasive vegetation.

On May 25, 2010, we received documentation from the County of Orange that an Environmental Impact Report for this project had been certified on May 25, 2010, stating that the project is in compliance with the California Environmental Quality Act and that the County of Orange, acting as the Board for the Orange County Flood Control District, shall be considered the responsible lead agency throughout the duration of this project.

Pursuant to California Code of Regulations, Title 14, Chapter 3, Section 15096, as a responsible agency, the Regional Board is required to consider an EIR prepared by the lead agency in determining whether to approve a Section 401 Certification. The lead agency has responsibility for mitigating and avoiding only the direct and indirect environmental effects of those parts of the project, which it decides to carry out, finance, or approve. Further, the responsible agency must make findings as required by Sections 15091 and, if necessary, 15093, for each and every significant impact of the project.

As required by Section 15096, the Regional Board has considered the EIR prepared for the proposed project, and information provided subsequently in the County's application, in approving this Certification. More specifically, the Regional Board has considered those sections of the EIR relating to water quality. Based on the mitigation proposed in the EIR, and the conditions set forth in this Certification, impacts to water quality will be reduced to a less than significant level and beneficial uses will be protected. Thus, the Regional Board finds that changes or alterations have been required in, or incorporated into the project, which avoid or mitigate impacts to water quality to a less than significant level.

**This 401 Certification is contingent upon the execution of the following conditions:**

1. All mitigation identified above will be completed in a timely manner.

2. Submit copies of CDFG-, USFWS-, and/or ACOE-required mitigation and monitoring plans and associated progress reports to Regional Board staff, on the same submittal schedule specified by those agencies.

3. Sediment removal activities shall not cause dissolved oxygen (D.O.) in downstream receiving waters to be depressed below 5.0 mg/l, or if the background D.O. level is below 5 mg/l, the discharge shall not cause a further depression as a result of controllable factors. Monitoring for dissolved oxygen shall be conducted at least once daily during sediment removal activities. Monitoring shall be conducted on representative water samples, or instantaneously. Monitoring shall occur immediately upstream and downstream of the project's sediment removal area. D.O. test results shall be submitted to Regional Board staff in a timely manner.

4. Waters of the Region shall be free of changes in turbidity that adversely affect beneficial uses. During the sediment removal activities, the turbidity upstream of the project and at the downstream end of the project in which sediment removal activities are occurring shall be compared on a daily basis. There shall not be an increase in turbidity resulting from controllable factors at the downstream monitoring point when compared with turbidity monitored at the upstream (background) monitoring point that exceeds the following:

- a. If background turbidity is 0-50 NTU, not to increase more than 20%
- b. If background turbidity is 50-100 NTU, not increase more than 10 NTU
- c. If background turbidity is > 100 NTU, not to increase more than 10%

Turbidity test results shall be submitted to Regional Board staff in a timely manner.

5. Vegetative debris, including mulched material, leaves, and twigs/branches, and other trash which results from or is uncovered by the vegetation removal operations shall be removed from the creek channel as soon as possible. The objective of this condition is to prevent this debris from being transported to Newport Bay by creek flows. The County of Orange shall timely remove debris resulting from this project that reaches Newport Bay.

6. The project proponent shall utilize Best Management Practices during project construction to minimize the dispersion of silt and debris to drainage systems or other waters of the state and of the United States.

7. An effective monitoring plan must be developed and implemented to document compliance with conditions 3, 4 and 6 above. Any suspected violation of these conditions must be reported to Regional Board staff in writing within 24-hours of discovery. The monitoring plan and records of monitoring activities must be maintained



on site for the duration of the proposed discharge and be available for inspection by Regional Board staff.

8. Substances resulting from project-related activities that could be harmful to aquatic life, including, but not limited to, petroleum lubricants and fuels, cured and uncured cements, epoxies, paints and other protective coating materials, portland cement concrete or asphalt concrete, and washings and cuttings thereof, and debris from metal welding or metal cutting operations, shall not be discharged to soils or waters of the state.

9. Motorized equipment shall not be maintained or parked within or near any stream crossing, channel or lake margin in such a manner that petroleum products or other pollutants from the equipment may enter these areas under any flow conditions. Vehicles shall not be driven or equipment operated in waters of the state on-site, except as necessary to complete the proposed project.

10. Adherence to the requirements of this certification does not relieve the proponents of this project from compliance with requirements of local, county, other state, and federal agencies.

11. Discharges of construction dewatering wastes at the project site shall be permitted under and in compliance with appropriate waste discharge requirements, such as Regional Board Order No. R8-2009-0003, "General Waste Discharge Requirements for Discharges to Surface Waters that Pose an Insignificant (De Minimus) Threat to water Quality."

12. This Water Quality Certification is subject to the acquisition of all local, regional, state, and federal permits and approvals as required by law. Failure to meet any conditions contained herein or any of the conditions contained in any other permit or approval issued by the State of California or any subdivision thereof may result in the revocation of this Certification and appropriate enforcement action.

13. This Certification and any subsequent amendments must be maintained on site as a denoted element of any project SWPPP or WQMP, and be available for inspection upon request by Regional Board staff.

Under California Water Code, Section 1058, and Pursuant to 23 CCR 3860, the following shall be included as conditions of all water quality standards certification actions:

(a) Every certification action is subject to modification or revocation upon administrative or judicial review, including review and amendment pursuant to Section 13330 of the Water Code and Article 6 (commencing with Section 3867) of this Chapter.

(b) Certification is not intended and shall not be construed to apply to any activity involving a hydroelectric facility and requiring a FERC license or an amendment to a FERC license unless the pertinent certification application was filed pursuant to Subsection 3855 (b) of this Chapter and that application specifically identified that a FERC license or amendment to a FERC license for a hydroelectric facility was being sought.

(c) Certification is conditioned upon total payment of any fee required under this Chapter and owed by the applicant.

This discharge is also regulated under State Water Resources Control Board Order No. 2003-0017-DWQ (Order No. 2003-0017-DWQ), "General Waste Discharge Requirements for Dredge and Fill Discharges That Have Received State Water Quality Certification" which requires compliance with all conditions of this Water Quality Standards Certification. Order No. 2003-0017-DWQ is available at [www.swrcb.ca.gov/resdec/wgorders/2003/wgo/wg02003-0017.pdf](http://www.swrcb.ca.gov/resdec/wgorders/2003/wgo/wg02003-0017.pdf).

This letter constitutes a conditional water quality standards certification. Although we anticipate no further regulatory involvement, if the above conditions are changed, any of the criteria or conditions as previously described are not met, or new information becomes available that indicates a water quality problem, we may formulate Waste Discharge Requirements for the project.

In the event of any violation or threatened violation of the conditions of this certification, the violation or threatened violation shall be subject to any remedies, penalties, process or sanctions as provided for under state law. For purposes of section 401 (d) of the Clean Water Act, the applicability of any state law authorizing remedies, penalties, process or sanctions for the violation or threatened violation constitutes a limitation necessary to assure compliance with the water quality standards and other pertinent requirements incorporated into this certification.

In response to a suspected violation of any condition of this certification, the SARWQCB may require the holder of any permit or license subject to this certification to furnish, under penalty of perjury, any technical or monitoring reports the SARWQCB deems appropriate. The burden, including costs, of the reports shall be reasonable in relation to the need for the reports and the benefits to be obtained from the reports.

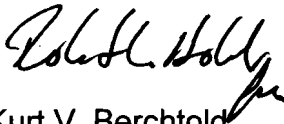
In response to any violation of the conditions of this certification, the SARWQCB may add to or modify the conditions of this certification as appropriate to ensure compliance. Pursuant to California Code of Regulations Section 3857, we will take no further action on your application. This letter constitutes a technically conditioned water quality

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certification. Please notify our office five (5) days before construction begins on this project.

If you have any questions, please call Marc Brown at (951) 321-4584 or Mark Adelson at (951) 782-3234.

Sincerely,



Kurt V. Berchtold  
Executive Officer

cc: (via electronic mail):

U.S. Army Corps of Engineers - Jason Lambert  
U.S. Environmental Protection Agency, Supervisor of the Wetlands Regulatory  
Office - Eric Raffini (WTR-8)  
State Water Resources Control Board, DWQ-Water Quality Certification Unit, Bill  
Orme  
State Water Resources Control Board, OCC - David Rice  
ICF – Shelah Riggs

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